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CHARLES ELMORE CR

In the Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 12, ORIGINAL.

THE STATE OF CONNECTICUT
v.
THE COMMONWEALTH OF MASSACHUSETTS.

MOTION FOR ORDER SETTING CASE DOWN FOR ARGUMENT AND TO ADVANCE FOR ARGUMENT.

JOSEPH E. WARNER,
Attorney General of Massachusetts.
BENTLEY W. WARREN,
Special Assistant Attorney General of Massachusetts.
GERALD J. CALLAHAN.
R. AMMI CUTTER.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

In the
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NOTICE.

To the State of Connecticut, the complainant herein; to the Honorable Benjamin W. Alling, Attorney General of said State; and to Ernest L. Averill, Esq., and to Benedict M. Holden, Esq., both of Hartford, Connecticut, of counsel in said case:

Please take notice that at the incoming of the Supreme Court of the United States at twelve o'clock noon at the Capitol Building in the City of Washington, District of Columbia, on Monday, October 6, 1930, or as soon thereafter as counsel can be heard, the above-named defendant will appear by its attorneys and present to said court the attached motion for an order setting the above entitled case down for argument and for an order to advance the said case for argument.

THE COMMONWEALTH OF MASSACHUSETTS,

By JOSEPH E. WARNER,
Attorney General,

By BENTLEY W. WARREN,
Special Assistant Attorney General,

GERALD J. CALLAHAN,

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And now comes the defendant, The Commonwealth of Massachusetts, and moves that the above-entitled case be set down by order of this Honorable Court for oral argument at the earliest date possible upon the complainant's exceptions to the report of the Special Master and that an order be entered by this Honorable Court directing each of the parties to file briefs on or before days certain prior to the date upon which the said case is set down for oral argument.

THE COMMONWEALTH OF MASSACHUSETTS,

By JOSEPH E. WARNER,
Attorney General,
By BENTLEY W. WARREN,
Special Assistant Attorney General,
GERALD J. CALLAHAN,
R. AMMI CUTTER.

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Office Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
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MASSACHUSETTS.

STATEMENT IN SUPPORT OF DEFENDANT'S MOTION TO ADVANCE.

JOSEPH E. WARNER,
Attorney General of Massachusetts.
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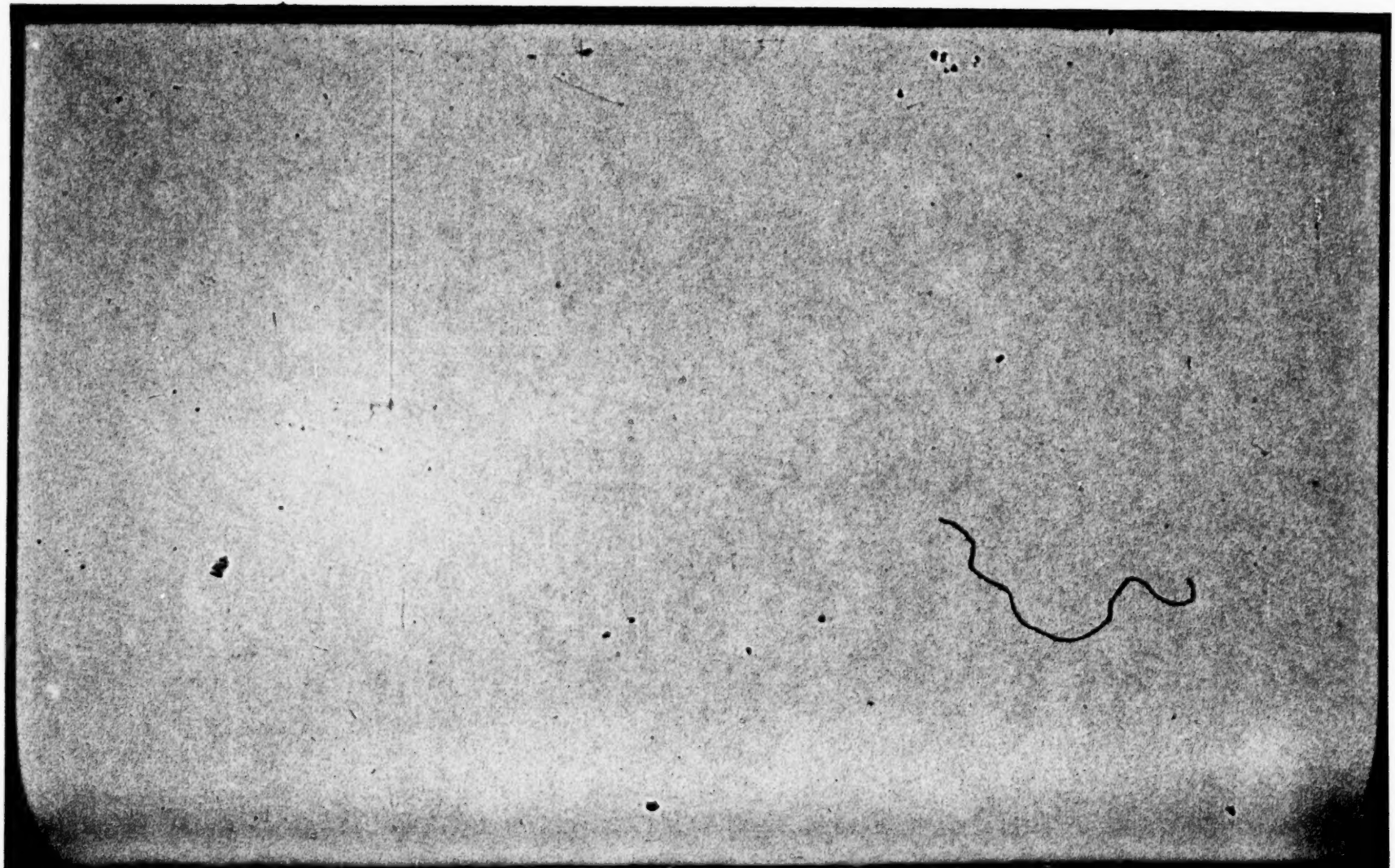

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STATEMENT IN SUPPORT OF DEFENDANT'S MOTION TO ADVANCE.

The above-entitled case is a bill in equity brought by the State of Connecticut against the Commonwealth of Massachusetts, seeking to enjoin the diversion of a portion of the waters of two small streams, tributary to the Connecticut River. The purpose of the proposed diversion is to supply the City of Boston and the Metropolitan District about Boston with an adequate supply of pure drinking water.

The case has been referred by this Honorable Court to the Honorable Charles W. Bunn, as Special Master, and the Special Master has filed a report recommending that the bill be dismissed. The defendant is informed that the complainant proposes to file exceptions to the report of the Special Master. The defendant has disclaimed any intention of filing any exceptions to the said report.

The serious situation immediately confronting the City of Boston and the officials in charge of supplying said city and the Metropolitan District around said city with a pure supply of drinking water is fully set out in the affidavit of Davis B. Keniston, Chairman of the Metropolitan District Commission, hereunto annexed. That situation is the basis of the defendant's request that the above-entitled case be advanced for argument on the complainant's exceptions to the report of the Special Master.

Respectfully submitted,

JOSEPH E. WARNER,
Attorney General of Massachusetts.
BENTLEY W. WARREN,
Special Assistant Attorney General.
GERALD J. CALLAHAN.
R. AMMI CUTTER.

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AFFIDAVIT OF DAVIS B. KENISTON IN SUPPORT OF DEFENDANT'S MOTION TO ADVANCE.

I, Davis B. Keniston, being duly sworn make oath and depose as follows: I am chairman of the Metropolitan District Commission, existing by virtue of General Laws of the Commonwealth of Massachusetts, chapter 28, section 1 and acts in addition thereto and in amendment thereof. Said Metropolitan District Commission has charge of the operation and management of the public water supply furnished to the City of Boston and the Metropolitan District surrounding said city.

The principal source of supply of said Metropolitan District is now the Wachusett Reservoir situated in Clinton, Massachusetts. Because of the prolonged drought during the year 1929 and during the year 1930 up to and including the date of this affidavit, the water supply in

the Wachusett Reservoir has been greatly diminished. On September 30, 1930 said reservoir stood at a lower level than at any time since it was first put into service and contained only 29,000,000,000 gallons of water, 10,000,000,000 gallons of which cannot be used without imperiling the health and safety of the public. The full capacity of this reservoir is 65,000,000,000 gallons. The average rate of consumption of the water from this reservoir is at the present time, 140,000,000 gallons a day.

The project, which is the subject of contention in the above entitled case involving the transfer of flood waters from the watershed of the Ware River and of certain water from the watershed of the Swift River, has been adopted by the Commonwealth of Massachusetts as a method of augmenting the supply of water of the City of Boston. In view of the depleted state of the present supply the City of Boston will be faced with a grave and severe emergency, if waters from the watershed of the Ware River cannot be transferred into the Wachusett Reservoir by the early spring of 1931.

Subscribed at Boston, Suffolk County, Commonwealth of Massachusetts this 1st day of October 1930.

DAVIS B. KENISTON

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. OCTOBER 1, 1930

Then appeared the above named Davis B. Keniston, personally known to me and being duly sworn made oath that the foregoing statement by him subscribed is true.

Before me

(Notarial Seal) HARVEY E. WEIR

Notary Public

My Commission Expires Feb. 20, 1931

THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE SECRETARY

Boston Oct. 2, 1930

I hereby certify, That at the date of the attestation hereto annexed, Harvey E. Weir whose name is signed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking the same, a Notary Public for the said Commonwealth duly commissioned and constituted; that to his acts and attestations, as such, full faith and credit are and ought to be given in and out of court; that as such Notary Public, he is by law authorized to administer oaths and take acknowledgments of deeds or conveyances of lands, tenements or hereditaments and other instruments throughout the Commonwealth to be recorded according to law; and that I verily believe his signature to the annexed attestation to be genuine.

In Testimony of which, I have hereunto affixed the GREAT SEAL OF THE COMMONWEALTH the date above written.

(Great Seal of the Commonwealth)

F. W. COOK,
Secretary of the Commonwealth.